



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: White Storage & Retrieval Systems, Inc.

File: B-245081

Date: October 30, 1991

Steven B. Wiley for the protester,
Millard F. Pippin, Department of the Air Force, for the
agency.
Aldo A. Benejam, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that firm failed to submit timely proposal because agency official allegedly orally informed protester prior to closing that solicitation was being canceled does not state a valid basis for protest because oral advice is not binding on the government, and protester assumed the risk of relying on such advice.
2. Protest based upon alleged failure of offeror to receive solicitation amendments extending the original closing date for receipt of proposals is dismissed, where there is no allegation that contracting agency failed in its obligation to use a reasonable method to disseminate solicitation documents to prospective offerors.

DECISION

White Storage & Retrieval Systems, Inc. protests any award under request for proposals (RFP) No. F33600-91-R-0197 issued by the Department of the Air Force for a mechanized storage handling system. The protester contends that the firm was improperly prevented from submitting a timely proposal because an agency official orally informed White prior to closing that the solicitation was being canceled. White also maintains that the agency improperly failed to provide the firm with two amendments to the solicitation which extended and established the closing date for receipt of proposals.

We dismiss the protest because it fails to state a valid basis for protest. See 4 C.F.R. § 21.3(m) (1991).

The RFP, issued on May 20, 1991, established June 21 as the closing date for receipt of proposals. According to the

agency, on June 13, White telephoned the procuring activity with technical questions. The record contains a handwritten "Memo for File" dated June 13, allegedly documenting White's conversation with the contracting specialist on that day. The memo states in part "[White] called . . . Solicitation closing date is being canceled and an amendment issued to include missing page 13. Referred [White] to [the project engineer] on technical questions." Amendment No. 0001, issued on June 20, extended the original closing date indefinitely. Amendment No. 0002, issued on June 28, revised the purchase description for the required system and established July 12 as the new closing date.

The agency received five proposals by that date. Although White was one of several firms distributed the initial RFP, White did not submit a proposal. According to the protester, the firm was improperly prevented from submitting a timely proposal because the contracting specialist had told White during the telephone conversation prior to closing that the RFP had been "canceled due to uncertainties and questions" concerning the software specifications, and White did not subsequently receive the amendments extending and establishing the RFP's closing date. The agency has not made award pending resolution of the protest.

The protester disagrees with the agency's account of events. White states, for example, that it contacted the contracting specialist on June 19, not on June 13. The protester argues that since it was advised that the RFP was being canceled, and since the firm did not receive the amendments extending and establishing the closing date, White was improperly prevented from submitting a timely proposal. White requests as its remedy that the RFP be canceled and that the firm be allowed to submit a proposal under a reissued RFP.

White's apparent misunderstanding, based upon its conversation with the contracting specialist, that the RFP was being canceled--as opposed to the closing date being extended--does not provide a valid basis for protest. Federal Acquisition Regulation (FAR) § 52.215-14, incorporated by reference into the RFP, warned that oral explanations or instructions given before award would not be binding on the government. We have consistently held that offerors rely upon such oral advice at their own risk. See C & T Marketing Consultants, Inc., B-236865, Jan. 5, 1990, 90-1 CPD ¶ 22; Management Concepts, Inc., B-222583, June 3, 1986, 86-1 CPD ¶ 517.

As for White's alleged failure to receive the amendments to the RFP, the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to

ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. In pursuit of these goals, it is a contracting agency's affirmative obligation to use reasonable methods for the dissemination of solicitation documents to prospective contractors. Ktech Corp., B-240578, Dec. 3, 1990, 90-2 CPD ¶ 447. In particular, the government is required by regulation to add to the solicitation mailing list all firms that have been furnished solicitations in response to their requests, so that they will be furnished copies of any amendments, unless it is known that the request was made by an entity which is not a prospective offeror. See FAR §§ 15.403, 14.205.

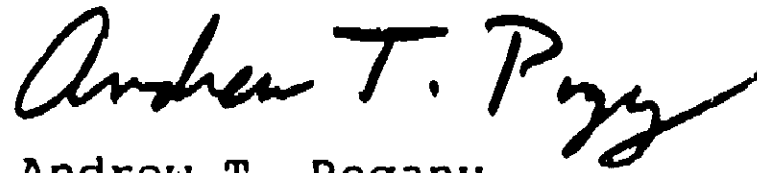
Concurrent with the agency's obligations in this regard, prospective contractors have an obligation to avail themselves of reasonable opportunities to obtain solicitation documents. Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. A prospective contractor thus bears the risk of not receiving a solicitation amendment unless there is evidence (other than nonreceipt by the protester) establishing that the agency failed to comply with the FAR requirements for notice and distribution of amendments. Shemya Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108. Here, the record shows that the RFP and the two subsequent amendments were mailed to White. The protester has not alleged and there is no evidence in the record to suggest that the agency failed to comply with the FAR requirements for proper notice and distribution of solicitation documents. The protester must therefore bear the risk of nonreceipt.

Finally, White points out that amendment No. 0001 extending the original closing date indefinitely, was issued only one day prior to closing. Relying on FAR § 15.410(b), White argues that the agency was required to notify the firm by telephone or telegram of the change in the original closing date.¹ Assuming that the FAR provision White relies upon applies here, the agency's failure to telephone White to inform the firm of the change to the closing date did not preclude the protester from submitting a timely proposal. Rather, White's failure to submit a proposal by the extended July 12 closing date was due to the protester's alleged

¹FAR § 15.410(b) states in pertinent part, "[i]f the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, and the notification shall be confirmed in the written amendment to the solicitation." It would appear that by informing White prior to closing that the "solicitation closing date is being canceled," the contracting specialist substantially complied with this notice requirement.

nonreceipt of amendment No. 0002 to the RFP--a risk White assumed. See Goodway Graphics of Virginia, Inc., B-236386, Nov. 22, 1989, 89-2 CPD ¶ 491.

The protest is dismissed.

A handwritten signature in cursive script, reading "Andrew T. Pogany".

Andrew T. Pogany
Acting Assistant General Counsel